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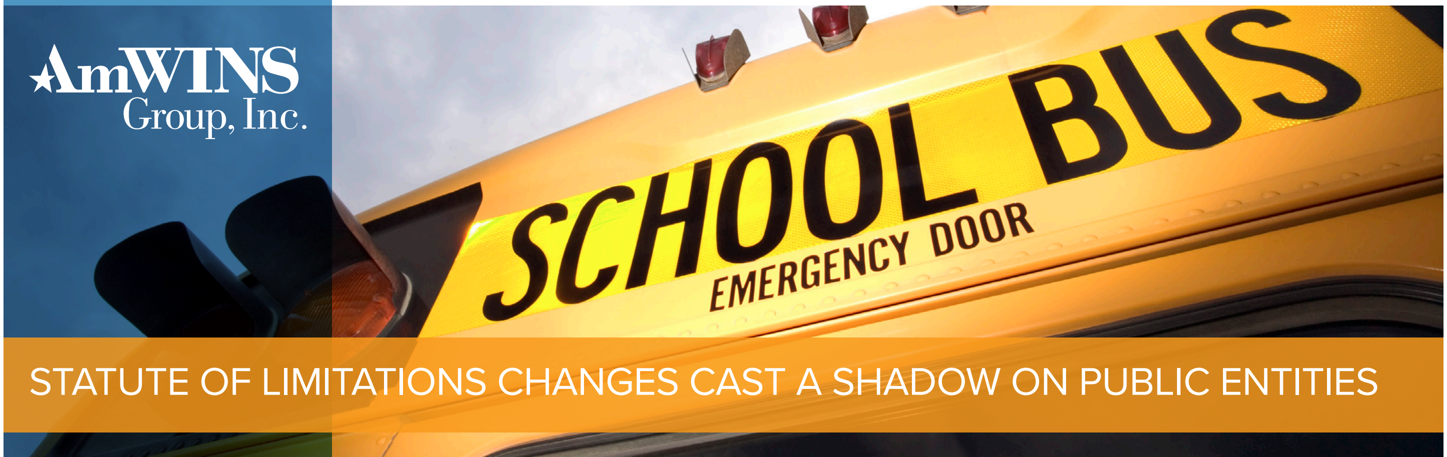

STATUTE OF LIMITATIONS CHANGES CAST A SHADOW ON PUBLIC ENTITIES

CONTACT

To learn more about how AmWINS can help you place coverage for your clients, reach out to your local AmWINS broker.

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Courtesy of AmWINS Group, Inc.

ABOUT THE AUTHOR

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ON YOUR TEAM.

As the P&C market continues to harden, accounts across many sectors of business are seeing double-digit rate increases in property and liability lines, and the public entity sector is no exception. Additionally, public entity accounts are now facing a rise in claims related to new state-level laws changing the statute of limitations and giving childhood sex abuse victims more time to file civil lawsuits.

Since 2002, 80 percent of states have amended their child sexual abuse laws to modify or pause the period of time set forth by a statute of limitations so that a suit may be filed long after it previously had been allowed. For instance, in Florida, if abuse allegedly happened to a victim who was under age 16 at the time, there is no statute of limitations. In California, Assembly Bill 218, passed in October 2019, both extended the statute of limitations and opened a three-year “lookback window” for filing new claims or reopening action on previously time-barred claims. Nationwide, social media has contributed to an increase in abuse claims, adding fuel to an already hot fire by giving broad, instant publicity to allegations.

As some states adopt more liberal laws than others, plaintiffs’ attorneys shop for the most favorable jurisdiction, which also drives up claims costs. Organizations with a multi-state or national reach face the risk of lawsuits both in individual states and at the federal level. These actions lead to potentially dire consequences for public entities, including the much-publicized bankruptcy filing by the Boy Scouts of America in February 2020.

MARKET REACTION

Carriers’ concerns about the rise in lawsuits is reflected in an overall reduction in capacity, declination of insurance to high-risk classes of business, an increase in quota-share offerings, and mandates for higher self-insured retentions. With some jurisdictions providing statutes of limitations as far back as 50 years for abuse claims—or even eliminating them altogether—some insurers are only willing to offer coverage on a claims-made basis. Others are attempting to carve out abuse coverage from the general liability policy, and monoline sexual abuse and molestation coverage is proving increasingly difficult to find. As a result, more and more public entities are resorting to alternative risk financing, captives, JPAs and other arrangements.

Given the rate increases and potential influx of claims, public entities need to consider how their liability program is structured to better anticipate costs. Although self-insured retention plans offer lower up-front pricing, organizations bear a greater burden of risk. And in an era of rising claim frequency and “nuclear” verdicts, such plans may be woefully inadequate to cover claims that are made.

Every public entity’s budget will negatively be impacted going forward, and retailers should look for a product that can guarantee a premium on at least one line of coverage to allow some control over the public entity’s insurance spending. One coverage where costs can be fixed is workers’ compensation.

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A guaranteed-cost, first-dollar workers' compensation program removes the unpredictability of claims and frees up cash flow that would otherwise be allocated to self-insured retention funding.

Benefits of a workers' compensation program extend beyond guaranteed cost savings and include cost avoidance through robust risk-management services such as loss control, managed care programs, and nurse triage services. Additionally, public entities should seek liability risk-management services from their brokers and carriers. Sought-after capabilities include broad abuse coverage, bullying and other specialty coverages, and training programs for public entity employees.

LOOKING AHEAD

Broadening of statutes will continue, and the overall hard market is expected to stretch into at least 2021. Retailers should prepare clients for significant rate increases, changes in terms, and the potential need to move coverage from admitted paper to the E&S market. Insureds should proactively take these steps: 1) identify potential victims by reviewing old claims that were time-barred, 2) compile or recreate old insurance policies, and 3) evaluate their overall abuse risk management program to include training, reporting, and documentation. In this challenging marketplace, it is essential for retailers to partner with a wholesaler that has the experience, expertise and market access to develop effective risk-management solutions.

AmWINS Specialty Casualty Solutions (ASCS), an AmWINS Group company, is a full-service managing general agency with focused expertise in delivering workers' compensation solution for niche markets. The ASCS School Insurance Program offers first-dollar, guaranteed-cost coverage and risk-management services that meets the unique challenges faced by todays' educational entities. To learn more visit amwins.com/schoolinsurance.